

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
)	WC Docket No. 12-375
Rates For Interstate Inmate)	
Calling Services)	

COMMENTS

The Washington Lawyers' Committee for Civil Rights and Urban Affairs ("Committee") writes to specifically comment on questions raised in the Commission's Second Further Notice of Proposed Rulemaking, Section H: Accessible Inmate Calling Services.¹

The Committee has been at the forefront of litigating issues for Deaf and hard of hearing prisoners. We were plaintiffs' counsel in *Minnis v. Johnson*,² to our knowledge the first prison case in the United States where videophone access was included in the settlement. We were also plaintiff's counsel in *Berke v Federal Bureau of Prisons*,³ the first case in the country where a judge ruled that a TTY may not be effective communication. In addition, we are counsel in a number of on-going cases on behalf of Deaf and hard of hearing prisoners, including:

- *Bryant v. Federal Bureau of Prisons*⁴
- *Heyer v. United State Bureau of Prisons*⁵
- *Jarboe v. Maryland Correctional Institution - Jessup*⁶

¹ Rates for Interstate Inmate Calling Services, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 13,170 (2014)(the "SFNPRM"). The SFNPRM was published in the Federal Register on November 21, 2014, and established January 5, 2015 as the deadline for filing Comments in this proceeding. 79 FED REG 69,682 (rel. Nov. 21, 2014). The deadline was subsequently extended to January 12, 2015, DA 14-1848 (rel. Dec. 17, 2014).

² 1:10-cv-00096 (Eastern District, Virginia) (Virginia Department of Corrections).

³ 1:12-cv-1347 (District of the District of Columbia) (Federal Bureau of Prisons).

⁴ 2:11-cv-00254 (Central District, California) (Federal Bureau of Prisons).

⁵ 5:11-ct-03118 (Eastern District, North Carolina) (Federal Bureau of Prisons).

⁶ 1:12-cv-00572 (District of Maryland) (Maryland Department of Public Safety and Correctional

- *Adams v. Commonwealth of Kentucky*⁷
- Investigations and pre-litigation activities involving other state departments of corrections.

These various cases have provided opportunities to engage in civil discovery, including depositions and sworn testimony of proffered experts on prison security and telecommunications. While protective orders and obligations to clients prevent us from submitting that testimony in whole, we summarize here.

Independent Legal Obligations of the ICS Providers

We would like to note that in all of our litigation so far, telecommunication access has been but one part of the issues facing Deaf and hard of hearing plaintiffs, so the departments of correction (DOC), not the Inmate Calling Service (ICS) providers, have been the defendants. However, as implied in the SFNPRM, the ICS providers have independent obligations under Americans with Disabilities Act, the Rehabilitation Act, and the Federal Communications Act.

Unwarranted Assumptions in the SFNPRM

The questions posed in the SFNPRM make certain assumptions that are contrary to how systems actually work. The first, and in our view, most important, assumption to correct is contained in PayTel's quoted comment: "ICS Vendors will work with confinement facilities where requested to enable video relay services," "[c]omply with all existing obligations and laws regarding service people with disabilities," and "[r]equire that deaf and hard of hearing inmates will have full access to TDD/TTY services at no additional charge."⁸

Implicit in that statement is the idea that DOCs are regularly asking and ICSs are regularly negotiating Deaf telecommunications. That simply is not true. Until sued, DOCs virtually never bring it up with their ICS providers, and until explicitly asked, ICS providers will not consider the possible technological solutions. We are aware of no ICS provider at this time that includes accessible telecommunication equipment as part of the packages that they provide to DOCs.

Services).

⁷ 3:14-cv-00001 (Eastern District, Kentucky) (Kentucky Department of Corrections).

⁸ Pay Tel Proposal at 4. See Letter from Marcus W. Trathen, Counsel to Pay Tel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 at 1 (filed Oct. 3, 2014) (attaching Pay Tel Proposal and ICS Regulatory Reform Proposal Comparison).

For example, we have learned in our litigation with the Federal Bureau of Prisons that accessible technology has not been a part of any of their past ICS negotiations. The first time they sent out any kind of inquiry was after they were ordered to complete a study in the context of *Berke*. To our knowledge, the BOP has not been able to locate a single ICS or VP provider whose products work with their ICS or any ICS it believes will work in its environment. This market failure makes sense only if we understand that until now, there has been no market – the DOCs are not looking to buy accessible equipment so no ICS that has developed their technology on their own.

Essentially, the country's DOCs and ICSs maintain a "don't ask, don't tell" policy: as long as no one brings up telecommunications that are accessible to Deaf and hard of hearing incarcerated men and women, there is no need to discuss it.

The second assumption that must be corrected is that TTYs and VPs are already integrated into the main ICS systems. In our experience, such integration is not the case. Rather because the ICS systems are not designed to be compatible with TTY or VP (especially relay services), TTYs that exist are in staff offices and used on staff phones systems with direct oversight by staff. Correctional staff makes sure that prisoners only call approved numbers directly or through the relay system and review the TTY printout to make sure that no prohibited activities or discussions are taking place.

Within the Virginia system, the only statewide system we know of that has implemented VP access, VPs are also installed on a system different from the standard ICS system and used with staff oversight.

Proposed Solution: Require that ICS Product Lines Integrate Accessible Technology

In light of this background, the assurance that ICSs will provide appropriate telecommunications if asked is not worth the paper on which it is written. They know that DOCs will not ask. As litigation against the DOCs has proven at best slow, it is time for the FCC to use its power to compel the ICSs to act. The FCC must require that ICSs create product lines to include or work with accessible telecommunication equipment.

We are not suggesting that the entire panoply of accessible telecommunication be installed at each prison or jail. Rather, we are suggesting that the FCC use its powers under Section 255 to require that all ICS providers develop products that include or are compatible with accessible equipment.

Were the FCC to order ICSs to integrate accessible telecommunications equipment, we believe that either DOCs will naturally order the accessible systems, as modern correctional practice highlights the importance of allowing prisoners to maintain contact with the outside world.

This ICS-focused approach will also obviate many of the potential security issues raised by DOCs in response to accessible technologies. One of the main concerns is that since, at present, such technology has to be jerry-rigged into existing prison telecommunications systems, recording and monitoring has to be done on an ad hoc basis. Once ICS providers are required to integrate the accessible technology with their current product line, this concern is no greater than with spoken calls. Also, a major concern with TTY use of the TRS is that once a prisoner is connected, he or she can ask the relay operator to connect to any other number. By integrating the TTY and VP service into the existing ICS, DOCs can gain control over numbers called, just as they do for hearing prisoner calls.

Length of Calls

As to questions as to the relative length of calls, our litigation has not revealed any research support for the general claim that TTY calls take three times the length of regular voice calls. The best we can point to is the expert report of Richard Lorenzo Ray filed in *Heyer*.⁹ Mr. Ray explained that in the United States TTYs use a language or “communication code” called Baudot to transmit signals over the phone lines at a speed of 45.5 baud. Due to TTY equipment limitations, it transmits tones at the rate of 45 characters per minute no matter how fast a person types.

Quick research reveals that audiobooks are recommended to play 150–160 words per minute, which is a good approximation for the rate of words in a spoken conversation. Typing convention is that a word is five keystrokes. So, a basic calculation reveals that in a spoken conversation, there are 750 to 800 characters “spoken” per minute. In other words, over seventeen times the characters are transmitted in a spoken conversation than over TTY. TTY calls do not take seventeen times as long as a spoken conversation because some conventions allow for the shortening of words, and in our experience, conversations are abbreviated.

FCC must create a scheme where ICS providers are not charging Deaf and hard of hearing users more money than charged to hearing users to achieve the communication of the same information.

⁹ See footnote 5, *supra*. Mr. Ray is ADA Compliance Coordinator for the City of Los Angeles Department of Disability, Co-chair of the Accessibility committee of the National emergency Number Association, and a member of the FCC Emergency Access Advisory Committee.

Conclusion

In light of its extensive experience in investigating and litigating with respect to communications problems faced by Deaf and hard of hearing prisoners across the country, the Committee appreciates the Commission's efforts to address the ICS issue and the importance of how the issues raised are resolved. Significant progress can be achieved in this area by requiring that ICS product lines integrate accessible technology and that ICS providers not charge Deaf and hard of hearing prisoners and their families more than is charged to hearing users to achieve the communication of the same information. On behalf of the many Deaf and hard of hearing prisoners and their families who will be affected, the Committee requests that these requirements be included in the Commission's proposed rules.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "D. Golden", written over a horizontal line.

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